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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 405

J. S. GARLINGTON, ET VIR,

Petitioners,

against

A. L. WASSON.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS.

M. C. MARTIN,
Counsel for Petitioners.

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Statutes Cited.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS, AUSTIN, TEXAS.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved.

This case presents the question of the validity and construction of Sub-Section (O) and Sub-Section (S) of Title 11, Section 203 of the Bankruptcy Act, and more particularly known as the Frazier-Lemke Act.

Such act sets out a procedure to be followed by farmers desiring to avail themselves of "agricultural compositions and extensions."

The petitioner in this case filed his application for an extension, and having failed to obtain a majority consent of creditors, filed his application under Sub-Section (S) of said act. While such proceedings were still pending, creditor A. L. Wasson foreclosed on certain real estate

belonging to petitioner, on which there existed a mortgage lien held by creditor in the principal amount of Five Thousand ($5,000.00) Dollars. Such proceedings were had originally by sale under deed of trust, and subsequently ratified by the District Court of Howard County, Texas.

An appeal was taken to the Court of Civil Appeals for the Eleventh Supreme Judicial District, at Eastland, Texas, which court affirmed. A motion for re-hearing was denied. Petitioners duly and timely filed their application for a writ of error to the Supreme Court of Texas, and on May 20, 1942, the Supreme Court of Texas denied a motion for a re-hearing.

This is a petition for writ of certiorari to review the decree of the Supreme Court of Texas refusing petitioners' application for a writ of error.

Reasons Relied Upon for the Allowance of the Writ.

This case presents the question of construction relating to an act of Congress, which has been passed upon by this Court and upon which the Supreme Court of Texas has, by its action in denying a writ of error, held adversely.

The cause was brought and has proceeded to final judgment in the court below with due regard to procedural and jurisdictional requirements. All essential questions of jurisdiction and procedure were fully explored in the State Tribunals in that the question of jurisdiction under the laws of Texas can be raised at any time, and as a result, the decision sought to be reviewed is based squarely upon the construction of the Federal statute involved.

The sole question involved is whether or not the State court has authority or jurisdiction to maintain foreclosure proceedings upon property belonging to a debtor after he has filed proceedings under Sub-Section (S) of Title 11, Section 203.

It is submitted that the decisions of this Court below cited hold to the contrary, which decisions are as follows:

John Hancock Mutual Life Insurance Company v. *Bartelle,* 308 U. S. 180, 84 L. Ed. 176;

Kalb v. *Feuerstein,* 308 U. S. 433, 84 L. Ed. 370.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Texas, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein, and that the decree of the Supreme Court of Texas be reversed and rendered by this Honorable Court, and that your petitioners have such other and further relief in the premises as to this Honorable Court may seem proper and just.

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